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09/921,299	08/03/2001	Thomas F. Egan	ACCESS-005XX	5645

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EXAMINER

MITCHELL, KATHERINE W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 02/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,299

Applicant(s) *SW*

EGAN, THOMAS F.

Examiner

Katherine W Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Costello US Patent 5502851 in view of Tsuga US Patent 6260218. Costello teaches a main cross member (18) with a first and second end (Fig. 3), a first leg (16) and a second leg (also labeled 16, Fig. 3) each having a first end and a second end (Figs. 3- 5), the first leg pivoting at a first end about a vertical axis at the first end of the main cross member and the second leg pivoting at a first end about a vertical axis at the second end of the main cross member (37,38 Fig 1, col 3 line 53-col 4 line 9), a plurality of caster assemblies (27, Fig. 1 and 4) attached to the first and second legs, each pivoting about a vertical axis (col 3 lines 39-41), and a support and handle assembly (40,41, Fig 1). Fig 2. shows an offset relationship between vertical mast 41 and boom support 50, and between vertical mast 41 and handle 112. Examiner notes that the "support and handle assembly" can comprise everything from 41 and up in Figs 1 or 2, or can be considered only 41 and bracketed assembly 40 in Fig. 1, as both are a handle and support assembly. Tsuga teaches in col 5 lines 14-17 that the apparatus is

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configured with a hydraulic jack 80 which can be replaced with any other lifting means, such as a motorized lift, if desired, thus meeting the definition of the word "modular":

mod·u·lar

mod·u·lar (məj¹ e-lər) *adjective*

1. Of, relating to, or based on a module or modulus.
2. Designed with standardized units or dimensions, as for easy assembly and repair or flexible arrangement and use: ¹

mod·ule

mod·ule (məj¹ l) *noun*

3. A standardized, often interchangeable component of a system or construction that is designed for easy assembly or flexible use: *a sofa consisting of two end modules.* ¹

However, Costello does not teach that the vertical support and handle assembly is attached to the main cross member via hinge means for pivoting {about} a substantially horizontal axis between a substantially vertical position and a substantially horizontal position. Tsuga teaches a portable support apparatus with a vertical support (5) and handle (91) assembly attached to the main cross member (42) via hinge means for pivoting about a substantially horizontal axis in Figs. 1 and 9. Examiner notes that the vertical support and handle assembly of Tsuga is attached to a bracket connecting the base legs 1, 2, and 3 to main cross member (42); however, the foldable function is the same and applicant has not recited that the support is connected *directly* to the main cross member with a hinge means. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Costello to include a hinged, foldable support and handle assembly in view of Tsuga in order to

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allow the lift to be folded to a small dimension for transport or storage as discussed by Tsuga in the abstract and col 2 lines 1-6 and col 7 lines 24-29 and 66-67.

Re claim 2: Costello teaches that the first and second legs are limited in their motion by two locking pins and detent holes (26, fully described on col 3 lines 22-37). (Examiner notes that Tsuga also teaches that the 1st and 2nd legs (1,2,) are limited in their motion by a pair of locking pins (22, 22) and detent holes in Fig 2 and 3) formed in the 1st and 2nd legs and the main cross member (42).)

Re claim 3: Were the support and handle assembly of Costello modified as taught by Tsuga to be folded, col 3 lines 53- col 4 line 9 disclose that a portion of the handle assembly would engage the 1st and 2nd legs when folded, as the folded apparatus of Tsuga has the support engaging legs when folded in Fig. 9. and the purpose of folding is to achieve a small dimension for easy transport. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Costello to include a hinged, foldable support and handle engageable with the first and second legs as taught by Tsuga in order to allow the lift to be folded to a small dimension for transport or storage as discussed by Tsuga in the abstract and col 2 lines 1-6.

Re claims 4 and 8: The support and handle assembly comprises mounting pins (46,47,49,84) suitable for attachment of lifting means as shown by Costello in Fig 1 and discussed in col 4 lines 10-27. Examiner notes that col 6 lines 12-17 teach that section 44 is telescopically inserted into lower mast member 42, thus the location of pins 47,49, and 84 can be vertically adjusted, and the lifting means (assembly comprising 50,54,

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and 53 and powered by 80,82 in Fig. 2) is thus removable. Hydraulic jack taught in col 5 lines 7-21 is considered a powering means for the lifting means, and col 5 lines 7-21 further teaches that "the hydraulic jack could be replaced with any other lifting mechanism, such as a motorized lifting mechanism if desired", thus further teaching the removable attachment / modularity of the hydraulic jack or alternate motorized lifting means.

Re claim 5: Costello in view of Tsuga as applied to claims 1 and 4 above teach all the elements. However, certain limitations of claim 5 have not been pointed out. Specifically, Costello Fig. 2 shows that the offset comprises a first substantially vertical portion (41) attached to the main cross member with a substantially horizontal portion (section at lower end of 50 with pin 49 best seen in Figs 1 and 2 and the horizontal portion from that section to handle 112 best seen in Fig 2) outwardly from the portable support apparatus and a 2nd substantially vertical portion (50,52) connected to the substantially horizontal portion, such that a load (attaches to 70) on the powered lifting means (assembly comprising 50,54, and 53 and powered by 80,82 in Fig. 2) would be safely positioned inward the plurality of casters as Fig 1 and 2 shows. Again, examiner notes that no connections are disclosed as *directly* connecting any parts.

Re claims 9-10: Costello in view of Tsuga as applied to claim 1, teach all the elements except a locking means for the support relative to the main cross member or base. Costello is obviously locked as it is fixed. Tsuga teaches such locking means in col 4 lines 46-64 and discusses the importance in ensuring safety by not collapsing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to have modified Costello to include a locking means for the support relative to the main cross member or base as taught by Tsuga in order to ensure safety. Tsuga Figs. 4-5 show a locking pin and blade arrangement.

3. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Costello US Patent 5502851 in view of Tsuga US Patent 6260218 as applied to claim 5 above and further in view of Ezenwa US Patent 5193633. Costello US Patent 5502851 in view of Tsuga US Patent 6260218 as applied to claim 5 above teach all the elements except a motion limiting assembly and electrical interlock switch to prevent the center of gravity from shifting too far from the central point of the casters. Ezenwa teaches in col 9 lines 20-62 a motion limiting assembly and electrical interlock switches for stability and to prevent patient lifting devices from shifting off center. Examiner notes that the exact structure is different, as the assembly is a different design, but the teaching of Ezenwa would have made it obvious to one of ordinary skill in the art at the time the invention was made to have modified Costello US Patent 5502851 in view of Tsuga US Patent 6260218 as applied to claim 5 above to include a motion limiting assembly and electrical interlock switches attached to the modular powered lifting means as taught by Ezenwa in order to prevent patient lifting devices from shifting off center and ensure safety and stability. Examiner notes that the motion limiting assemblies of both Ezenwa and applicant must attach to the power means to enable power to be switched on or off to stop the motion.

Response to Arguments

4. Applicant's arguments filed 12/15/2003 have been fully considered but they are not persuasive.

5. Applicant argues that Costello and Tsuga show integrated devices not configured to receive powered lifting means. Examiner disagrees. As cited in the above and the previous office action, Costello teaches:

Hydraulic jack taught in col 5 lines 7-21 is considered a powering means for the lifting means, and col 5 lines 7-21 further teaches that "the hydraulic jack could be replaced with any other lifting mechanism, such as a motorized lifting mechanism if desired", thus further teaching the removable attachment / modularity of the hydraulic jack or alternate motorized lifting means.

A previous discussion indicated that adding wording similar to --configured to receive powered lifting means-- might result in allowability; however, examiner explained to applicant and cited in the office action that further review showed this limitation taught by Costello.

6. The motivation to combine is found in the secondary reference as noted in the office action, and does not need to be in the primary reference. Tsuga specifically teaches and allows for folding to enhance easy transport and stowage in the abstract and col 2 lines 1-6.

7. Applicant argues that Costello does not teach a support and handle assembly having an offset with a substantially horizontal portion connected to a first substantially vertical portion outwardly from the portable support apparatus, thus minimizing the apparatus dimensions. Examiner has thoroughly searched the specification for details

of what is meant and found none, and thus based the evaluation of the limitations on the Figures. Using the common definition of outward:

out-ward

out-ward (out¹werd) *adjective*

1. Of, located on, or moving toward the outside or exterior; outer.²

Costello, Fig 2. shows an offset relationship between vertical mast 41 and boom support 50, and between vertical mast 41 and handle 112. Costello shows the offset features with the substantially horizontal section 50 connected to the first substantially vertical portion 44 (shown in Fig 1) outwardly from the portable support apparatus (the substantially horizontal portion is actually diagonal, as is applicant's {see applicants Figs. 1 and 2 – the section with the lead line from "30" touching its interior} and the portion is extending outwardly from the main body of the apparatus). Were the portion 50 of Costello not substantially horizontal, but rather vertical, the dimensions of the apparatus would be larger (see Fig 4 for effect of offset).

8. Applicant argues that Tsuga does not teach the handle engagement with the legs as described in claim 3. Examiner has stated that Tsuga teaches that a hinge/pivot at the intersection of the vertical support and horizontal base is known as a means to allow a lift apparatus to be folded for compact storage and transport, and that if the support and handle assembly of Costello were modified as taught by Tsuga to be folded, then Costello col 3 lines 53- col 4 line 9 discloses that a portion of the Costello handle assembly would engage the 1st and 2nd legs when folded, as the folded apparatus of

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Tsuga has the support engaging legs when folded in Fig. 9 and the purpose of folding is to achieve a small dimension for easy transport.

9. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., directly connected or the support and base each fixedly connected to a portion of the hinge means) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Tsuga teaches that the support 5 is attached to the frame via the hinge bracket such that it can move between a horizontal and vertical position in Figs 1 and 9.

Allowable Subject Matter

10. Claim 11 is allowed. Examiner notes the direct attachment combined with the description of the pivoting function requires a different structure than Costello in view of Tsuga, and that Dunn USP 5845348, cited but not applied, was seriously considered. Examiner notes that the apparatus of Dunn/Tsuga would have legs that pivot up rather than a vertical mast pivoting down with direct attachment of the handle assembly to the main cross member via hinge means and this direct pivot attachment would not serve to add compactness to the unit, and thus there would be no motivation to combine Dunn and Tsuga since it already folds a different way.

Conclusion

11. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W Mitchell whose telephone number is 703-305-6713. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4180.

Kwm
1/29/2004


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